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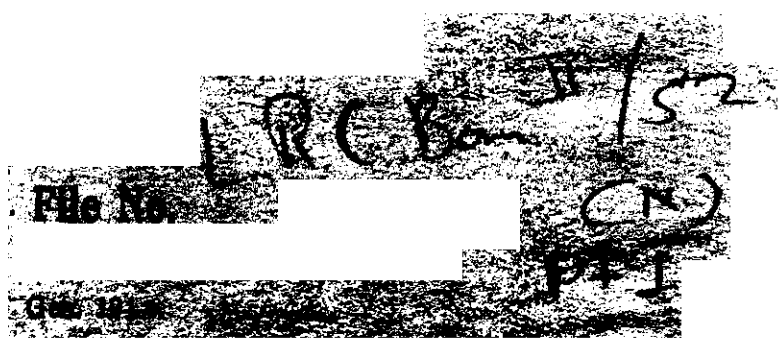
File No. L.R.C. Bom. II/52(N) pt. I

Legal Dept

B **BRANCH** (pt I (E) 1952)

Subject:— Notifications under the Bombay Land Revenue Code 1879

(For subsequent pps. pl. see pt. II)



5-B

Legal Department.

The proposal made by the Revenue Department is based on the suggestion made by the Barkhali Assistant in his letter at pages 33-34 ante, which is as under:-

"under the circumstances I hereby reqquest that Government should notify that all rules and Acts regarding alienations shown in Ex. A (p. 25 ante) are continued. Further the Barkhali Assistant who is empowered with the powers of Barkhali Adhikari under Government Resolution, Revenue Department No. 6920/49 dated 18th September 1950 under Watan Act, may further be empowered to exercise the powers of Barkhali and Giras Adhikari relating to other rules as shown in Ex. A (p. 25 ante) and as per power statements Ex. B and C (Slips A and B)."

2. This proposal will not be in order. The principle in regard to land tenures in the merged States is that they are not binding on the succeeding Government i.e. the Bombay Government, unless either expressly or impliedly Government consents to recognize them. In order to consider the question to what extent such alienations should be recognized or abolished, Government has appointed Shri Solanki and Dr. Patel. Their reports are before Government. Pending the consideration of their reports, it would not be desirable to pass even any executive orders which would lend colour to the view that Government have recognized these tenures. The position is that pending the decision of Government on their reports and the determination of the policy, Government do not propose to interfere with the alienations or their administration by the Officers of Government.

Instead of issuing a resolution as proposed it would be desirable to send instructions in the form of a letter directing that various functions to be done by the Barkhali Officers should be performed by other Revenue

Offices under the direction of the Collector pending further orders and pending the consideration of Government of the reports made by Shri Solanki and Dr. Patel.

Sd/-

Additional Secretary to Government.

U.R. to R.D., No. 610, dated the 16th January 1952.

EVY. 3/7.

Legal Department.

The proposal of the Revenue Department in its note at pages 134-135 ante is as follows:-

"The Barkhali lands may be exempted from the operation of Chapter X-A of the Bombay Land Revenue Code and the Schedule (Dha) to the Baroda Land Revenue Code may be applied to them with the modification that the power exercised by the Vahiwatdar, Mahalkari should be exercised by the Mamlatdar and those of Sarsuba and Barkhali Department by the Collector."

The Revenue Department holds that the implementation of the above suggestion involves the amendment of the Bombay Merged States (Laws) Act, 1950. The Revenue Department has, therefore, requested the R.L.A. to advise the expediency of undertaking such legislation.

There does not appear to be any conflict between the provisions of Chapter X-A of the Bombay Land Revenue Code and the provisions of Schedule (Dha) to the Baroda Land Revenue Rules. It is true that the Baroda Land Revenue Rules are repealed but the Schedule (Dha) which there is exclusively relatable to Barkhali lands has to be deemed to be in force in view of the fact that the Schedule does not simply provide for entry in mutation register but contains rules which imposes restrictions on the transfer of Barkhali lands and lays down conditions subject to which succession to a Barkhali land would be recognized. If the Rules are deemed to be repealed, the Barkhali lands would become free from the restrictions and conditions imposed under the Schedule. Moreover if they are to be revived and reenacted after having been repealed, it would amount to a recognition on the part of Government of the alienations. Government have not so far recognized the alienations in the merged States.

To what extent they are to be recognized and to what extent they are to be abolished would depend on the decision of Government on the reports of the Special Officers like Shri Solanki and Dr. Patel. The proposal amde by R.D. to give legislative recognition to the Barkhali rules is not proper. Chapter X-A of the Bombay Land Revenue Code and the said Schedule (Dha) both would be simultaneously applicable to Barkhali lands in Baroda area. The name of the transferee or successor that my be recognized under Schedule (Dha) would be entered by the village accountant in the mutation register under Chapter X-A. If, however, there would be any difficulty in simultaneously giving effect to both the provisions the proper course would be to issue a notification under section 135-A of the Code directing that Chapter X-A of the Code shall not be in force with reference to Barkhali lands in the Baroda area.

The Revenue Department in its note at page 134-135 ante has proposed that the powers exercised by Vahiwatdar Mahalkari, under the Schedule should be exercised by Mamlatdar and those of Sarsuba and Barkhali Department should be exercised by the Collector. In this connection attention of the Revenue Department is invited to the opinion expressed by the Additional Secretary in the linked case. The course suggested therein may be adopted. No legislation would be necessary to achieve the object in view. But on the other hand, if any such legislation is undertaken, it would be tantamount to giving recognition to alienations, which according to the policy adopted by Government are to be abolished.

Sd/-

Addtional Secretary to Government.

U.R. to R.D., No. 618, dated the 16th January 1952.

EVY. 3/7.

Legal Department.

Under the Bombay Merged States (Laws) Act, 1950 (Bom. IV of 1950), the Bombay Land Revenue Code, 1879, has been extended to all the merged States. Sub-section (3) of section 3 of the said Act provides that all appointments, delegations, notifications, orders, by-laws, rules and regulations made, issued or prescribed under any Act, Ordinance or Regulation extended by the Act to the merged States shall be deemed to extend to and be in force in the merged State.

2. G.N.R.D. No. 263 dated the 12th January 1904 being a notification deemed to have been issued under section 135A of the Bombay Land Revenue Code, 1879, it extends to the merged States also by virtue of the provisions of section 3(3) of the Bombay Merged States (Laws) Act, 1950. The said notification exempts certain classes of villages from the operation of Chapter A of the Bombay Land Revenue Code, 1879. The class of villages so exempted include Inam villages. In the circumstances, the notification extends to inam villages in the areas of merged terrritories also, and as such they are governed by the exemption.

3. The view taken by the R.D. that the said notification does not extend to merged territories is not, therefore, correct. As proposed by the Collector of Dharwar in his letter at p. 1 ante, it would be necessary to cancel the exemption by the issue of a notification.

4. A revised draft notification is accordingly sent herewith.

Sd/-

Additional Secretary to Government

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U.R. to R.D., No. 6468, dated the 26th April 1952.

EVY. 3/7.

Legal Department.

A revised draft notification is sent herewith.

2. In view of the provisions of section 95 of the Bombay Land Revenue Code, 1879, that the State Government can direct the survey of the village in any part of the State, survey operations can be carried out in the villages in Dangs which are in the protected forests and which have not yet been disforested. There is, therefore no legal objection to confer upon the Assistant District Inspector of Land Records, Dangs, all the powers of a Survey Settlement Officer for the purpose of survey of these villages and to appoint the Superintendent of Land Records, Surat Circule, to be his immediate superior before these villages are disforested as proposed in these papers.

Sd/-

Additional Secretary to Government.

U.R. to R.D., No. 4332, dated the 20th March 1952.

EVY. 3/7.

Legal Department.

The R.D. notification at page 95 is not in order.

2. No notification under sections 18 and 19 of the Bombay Land Revenue Code authorising and officer to execute sanads under section 133 of the Code can legally be issued. The last paragraph of section 133 of the Bombay Land Revenue Code provides that every such sanad shall be executed on behalf of the Government by such officer as may, from time to time, be lawfully empowered to executive the same. Article 299 of the Constitution provides that all contracts made in exercise of the executive power of a State and all assurances of property made in the exercise of that power shall be executed on behalf of the Governor by such persons and in such manner as he may direct or authorise. In virtue of this provision orders have been issued in G.R., H.D. No. 1758/6 dated 26th January 1950 directing inter alia that sanads granted under section 133 of the Bombay Land Revenue Code, 1879, or any other law for the time being in force relating to the survey or towns and cities shall be executed by the Special Officer appointed by Governor for the purpose. (Vide entry 24(d) under 'Revenue Department' in the copy of the G.R. refered to). The words "the special officer appointed by Government for the purpose" which also occurred under item N-7(e) of the Government Order reproduced in J.D., G.R. No. 341 dated 15th January 1916 were interpreted to mean the Inquiry Officer appointed by the Government under the Land Revenue Code for the purpose of carrying on survey of any land in any part of the Province with a view to a settlement of the land revenue. (Please see the interpretation as communicated under G.O., R.D. No. 8032 dated 2nd July 1917 in R.D. file 1001 Part II of 1917). It will be competent for the Inquiry Officer appointed

to make city survey inquiry in Bhor town to issue sanads under section 133. If, however, it is desired that the Prant Officer, Haveli, should be the Special Officer for the purpose of executing sanads under section 133 of the Code, it will be necessary to issue a specific G.R. in pursuance of provisions of Para 24(d) of G.R., H.D. No. 1758/6 dated the 26th January 1950. R.D. should consider which of the two courses should be followed in this case.

Sd/-
Additional Deputy Secretary to Government.

U.R. to R.D. No. 9108, dated the 31st May 1952.

EVY. 3/7.

Legal Department.

The draft notification proposed to be issued by the Revenue Department at page 95 ante is not in order. Attention of that Department in this connection is invited to this Department U.R. No. 9108, dated 31-5-52. As pointed out therein no notification under sections 18 and 19 of the Bombay Land Revenue Code, 1879, authorising any officer to execute sanads under section 133 of the said Code can legally be issued. The appointment of the Assistant or Deputy Collector in charge of Koregaon Division as the Special Officer for the purpose of executing sanads in question may be made by issueing a specific G.R. in that behalf in pursuance of provisions of paragraph 24(d) of G.R., H.D., No. 1758/6, dated the 26-1-1950.

Sd/-

Additional Deputy Secretary to Government

U.R. to R.D., No. 9984, dated the 14th June 1952.

EVY. 3/7,

Legal Department.

The R.D. proposal to appoint the Shirastedar, City Survey Office, Baroda, as a "Revenue Officer" under the Bombay Land Revenue Code for the purposes of Chapter XA is not in order. As pointed out in this Department U.R. No. 19821 dated the 10th December 1951 the Shirastedar in question cannot be deemed to be a revenue Officer within the meaning of section 3(1) of the said Code. Nor is there any provision in Chapter XA for the appointment of a "revenue officer". The powers under Chapter XA can be exercised by the revenue officers indicated therein without any specific authorisation in that behalf; and the Shirastedar not being a revenue officer within the meaning of the Code cannot therefore exercise the same.

2. As regards the appointment of the Shirastedar in question under section 135D(4), that section provides that order disposing of objections entered in the register of disputed cases shall be recorded in the register of mutations by such officers and in such manner as may be prescribed by rules made by the State Government in this behalf. It is clear that the section itself does not preclude his appointment. It is the rule made under the Code which regulates the appointment under that section. Under rule 108(1) of the Land Revenue Rules 1921, such disputes shall ordinarily be disposed of by the Mamlatdar's first Karkun or by the Mamlatdar, but may be disposed of by the District Inspector of Land Records of by any revenue officer of superior rank to that of first Karkun.

Sd/-

Additional Deputy Secretary to Government,
Legal Department.

U.R. to R.D., No. 11892, dated the 18th July 1952.

Legal Department.

The Revenue Department notification at page 45 ante is not in order, for the following reasons:

Under para. 2 of section 40 of the Bombay Land Revenue Code, 1879, where survey settlement is completed after the passing of the Code, reservation of trees either specifically or by general notification must be done at any time previous to the completion of survey settlemtn. It cannot be done after.

In the first para. of section 40, of the Bombay Land Revenue Code, where the survey settlement has been completed before the passing of the Act, it is permissible to reserve trees by notification after such settlement.

By para. 3 of section 40, where permission to occupy land has been granted after the completion of the survey settlement the right to trees also passes unless expressly reserved by Government at the time of granting such permission.

Rule 62 of the Bombay Land Revenue Rules provides that when the right of Government to the trees in a holding has been once disposed of to the occupant or when all the reserved trees have been once cut and removed either.-

(a) at the grant of the land or

(b) after such grant or

(c) within 5 years before such grant;

Government will have no further claim to trees which may afterwards grow in the holding, or which may spring up from the old roots or sprouts so long as the land continues in occupation.

Consequently a general notification issued through out the State now reserving Mowhra trees will ignore these distinctions and will not be in order. The R.D. will please reconsider the proposal along these lines.

Sd/-
Additional Deputy Secretary to Government.

U.R. to R.D., No. 13400, dated the 16th August 1952.

EVY. 3/7.